

# **EXHIBIT 4**

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**From:** Pollack-Milgate, Deborah  
**Sent:** Wednesday, December 13, 2023 5:02 PM  
**To:** Duncan Byers; Moye, John  
**Cc:** Fehribach, Joseph; W. Ellis Boyle  
**Subject:** RE: [EXTERNAL] Activity in Case 5:22-cv-00015-FL Terracino et al v. Trimaco, Inc. et al Notice to Counsel

Duncan,

Trimcao disagrees with your interpretation. In particular, I don't understand your statement that "Because all of the preliminaries to filing the Motion must fall within the 30 days, and the Court has already ruled that the time period has run, an extension of that time period providing the window for the notice and potential telephonic discovery conference looks to be required." Terracinos refused to provide discovery on **November 27, 2023**. Before then, there was no dispute. I have not read anything from the Court stating that "the time period has run." If I have missed that, let me know. In any event, it is ironic that Terracinos want to argue lateness after failing to serve responses **at all** for two months.

As to your second point, you now say "we have given you everything we have". I don't know what that means and you have never stated that before. Does that mean you are **not** withholding any documents on the basis of privilege? That would be a problem from a spoliation perspective as documents associated with the opinion should have been maintained for the obvious anticipated litigation. Please clarify immediately.

In any event, I am pleased to see that you are now paying attention to deadlines and look forward to more responsiveness in the future. So that we can complete the necessary items prior to December 27, I will reach out to the Court tomorrow to see what times are available.

Very truly yours,

Deborah

**Deborah Pollack-Milgate** | Partner

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**From:** Duncan Byers <dbyers@dbyerslaw.com>  
**Sent:** Wednesday, December 13, 2023 4:44 PM  
**To:** Pollack-Milgate, Deborah <Deborah.PollackMilgate@btlaw.com>; Moye, John <JMoye@btlaw.com>  
**Cc:** Fehribach, Joseph <Joseph.Fehribach@btlaw.com>; W. Ellis Boyle <WEBoyle@wardandsmith.com>  
**Subject:** RE: [EXTERNAL] Activity in Case 5:22-cv-00015-FL Terracino et al v. Trimaco, Inc. et al Notice to Counsel

**Caution: This email originated from outside the Firm.**

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Thanks for reaching out.

I've gone back over Paragraph B(5) of the Case Management Order and discussed the same with Mr. Boyle, and in light of both that and the Court's denial of your Motion for failing to comply with B(5) I think that before any of the preliminaries in B(5) prior to refileing a Motion to Compel, you have to get an extension of time from the Court. In pertinent part, B(5) states that

Any motion raising a disputed issue of or relating to discovery, including any disputed motion to compel, for protective order, or to alter discovery requirements set forth herein (hereinafter, "discovery motions"), shall be filed and served within 30 days of the act or omission in discovery complained of, after good faith effort between the parties to resolve issue(s), **unless upon good cause shown, time for filing such motion is extended**. Before filing, the court requires notice of such disputed discovery issue(s) for its consideration in setting a telephonic discovery conference. The complaining party must notify the office of the case manager, by telephone at (252) 638-8534, of the discovery dispute, and provide the parties mutually agreed to suggested dates and times for such conference. Etc. etc. etc.

Because all of the preliminaries to filing the Motion must fall within the 30 days, and the Court has already ruled that the time period has run, an extension of that time period providing the window for the notice and potential telephonic discovery conference looks to be required. I think that is a necessary first step before anything else and thus would require a Motion to extend the time period. In the event that you do file a Motion for Extension of time, please note that you should include specific language that "the Plaintiffs object in that the Court has already ruled on this and the request is outside the discovery period; Plaintiffs therefore object to this Motion as being in direct contravention to the Court's Text Order of December 11, 2023."

To the extent that you choose to proceed with attempting to have the Court consider setting a telephonic discovery conference, please inform the case manager and the Court that Plaintiffs object for the above reasons. However, should the Court choose to set a discovery conference, I am available at any time on December 20, December 22, December 28, and December 29.

Finally, as I have indicated before I will reiterate that there is no additional information responsive to your discovery requests. What you are seeking does not exist. When I told you that I would provide everything I did so.

And as a last note I have reached out to Mr. Kenyon, the appointed mediator, via telephone but have not heard back as of yet. If you have a good email address for him – which I don't – if you could provide that it may be helpful.

Best regards,

**Duncan G. Byers**

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**From:** Pollack-Milgate, Deborah <[Deborah.PollackMilgate@btlaw.com](mailto:Deborah.PollackMilgate@btlaw.com)>  
**Sent:** Wednesday, December 13, 2023 1:48 PM  
**To:** Duncan Byers <[dbyers@dbyerslaw.com](mailto:dbyers@dbyerslaw.com)>; Moyer, John <[JMoyer@btlaw.com](mailto:JMoyer@btlaw.com)>  
**Cc:** Fehribach, Joseph <[Joseph.Fehribach@btlaw.com](mailto:Joseph.Fehribach@btlaw.com)>; W. Ellis Boyle <[WEBoyle@wardandsmith.com](mailto:WEBoyle@wardandsmith.com)>  
**Subject:** RE: [EXTERNAL] Activity in Case 5:22-cv-00015-FL Terracino et al v. Trimaco, Inc. et al Notice to Counsel

Dear Duncan,

Thank you. In other matters, Trimaco plans to move forward seeking to compel documents as indicated in the motion filed last week. To that end, we need to provide conference dates to the Court when we call to schedule. Please let me know what availability you have the next three weeks to participate in such a conference. I would not usually ask for such a wide window, but I know things may be hit and miss over the holidays.

Thank you,

Deborah

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